

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DAVID J. McDONALD, and NADIA)	
D. McDONALD,)	Case No. _____
)	
<i>Plaintiffs,</i>)	Removed from the Circuit Court of St.
)	Louis County, Missouri
v.)	Case No. 25SL-CC00697
)	
SOUTHWEST AIRLINES CO.,)	JURY TRIAL DEMANDED
)	
<i>Defendant.</i>)	

NOTICE OF REMOVAL OF DEFENDANT SOUTHWEST AIRLINES CO.

COMES NOW defendant SOUTHWEST AIRLINES CO. (“Southwest”), a Texas corporation with its principal place of business in Texas, and hereby removes the above-captioned action to the United States District Court for the Eastern District of Missouri, Eastern Division, from the Twenty-First Judicial Circuit Court of Missouri (St. Louis County), pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

I.
INTRODUCTION

1. This civil action for damages arises out of physical injuries allegedly sustained by Plaintiff David J. McDonald on or about April 29, 2015, when he was a passenger on Southwest Flight 988 departing from St. Louis Lambert International Airport to Denver, Colorado. Specifically, Plaintiff David McDonald in Count I claims that he was injured when the pilots of Flight 988 aborted the takeoff. Plaintiff Nadia McDonald in Count II seeks damages for loss of consortium.

2. On April 24, 2020, Plaintiffs initially filed suit against Southwest in the Circuit Court of the City of St. Louis, Case No. 2022-CC00760, for David McDonald’s

alleged injuries on Flight 988. On July 29, 2020, Southwest answered and filed a motion to transfer based upon improper venue. The Plaintiffs consented to Southwest's motion to transfer, and on August 11, 2020, the matter was transferred to the Circuit Court of St. Louis County, Missouri, where it was assigned Case No. 21SL-CC01601.

3. While Case No. 21SL-CC01601 was pending in the Circuit Court of St. Louis County, Missouri, very little happened. The parties exchanged written discovery, but no depositions were taken. Plaintiffs' initial counsel, Eric Carlson, sought leave to withdraw from representing Plaintiffs, which was granted on February 27, 2023. Plaintiffs then retained attorney Lenny Kagan to represent them, who subsequently withdrew on November 1, 2023. On February 19, 2024, Southwest filed a motion to dismiss based upon Plaintiffs' failure to answer discovery and failure to prosecute the matter. On this same day, February 19, 2024, attorney Anne Brockland entered her appearance on behalf of Plaintiffs. Two days later, on February 21, 2024, Plaintiffs moved to dismiss their cause of action without prejudice. This motion was granted on March 14, 2024.

4. Where a plaintiff dismisses a suit without prejudice and later refiles the same cause of action in state court, the case is removable to federal court even though the defendant did not remove the initial matter. *See Hingst v. Providian Nat. Bank*, 124 F.Supp.2d 449, 452 (S.D. Texas 2000). Although Southwest did not remove this matter when it was originally filed on April 24, 2020, Southwest has not waived its right to remove this matter now. As the Court held in *Hingst*,

. . . It makes no difference that Plaintiff's claims are the same, and that Defendant failed to remove the previously dismissed state court suit. A defendant's conduct in a prior lawsuit has no bearing on the removability of a later suit. *See Baker v. Firestone Tire & Rubber Co.*, 537 F.Supp. 244,

247 (S.D.Fla.1982) (holding that when a plaintiff voluntarily dismissed an action and subsequently brought the same action against the same defendant, the defendant had the right to remove, despite having participated in the earlier trial for over one year in state court).

124Supp.2d at 452.

5. Waiver of a defendant's right to remove a case from state court will not occur, however, unless it is "clear and unequivocal." *See Beighley v. F.D.I.C.*, 868 F.2d 776, 782 (5th Cir.1989); *Custom Blending Int'l, Inc. v. E.I. Dupont De Nemours & Co.*, 958 F.Supp. 288, 289 (S.D.Tex.1997). Generally, there is no waiver "short of proceeding to adjudication on the merits." *See Beighley*, 868 F.2d at 782.

6. A complete copy of the state court file in Case No. 25SL-CC00697 is attached hereto as Exhibit A.

7. Each Plaintiff in the Petition seeks damages in an amount exceeding Twenty-Five Thousand Dollars (\$25,000.00). In the Petition, Plaintiffs allege that as a result of the rejected takeoff, David McDonald:

. . . sustain[ed] injuries to his neck as well as his back leading to incontinence, causing past and future pain and anguish; he has also been caused to expend sums of money for certain doctor, hospital, medical, and pharmaceutical expenses for the treatment of said injuries, and he will be compelled to expend sums of money in the future for the treatment of his injuries. Petition, ¶ 8.

8. In Plaintiff David McDonald's handwritten interrogatory answers in Case No. 21SL-CC01601, he claims to have sustained a "broken back" as a result of the rejected takeoff of Flight 988. He also stated in his answers to Southwest's interrogatories that he sustained injury to his "bladder and bowels – impotency."

II.
BASIS FOR REMOVAL

9. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1). The district courts have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.

10. Plaintiffs in their Petition allege that they reside in Idaho and thus may be presumed to be citizens of that state.

11. Southwest is a citizen of the State of Texas, where it is incorporated and where its principal place of business is located. This action, therefore, is between parties of diverse citizenship, and complete diversity among the Plaintiffs and Southwest existed both at the time of the filing of Plaintiffs' Petition on January 17, 2025, and at the time of the removal of this matter to this Court.

12. The amount in controversy exceeds \$75,000, exclusive of interests and costs, because Plaintiffs in their Petition and in their answers to interrogatories in Case No. 21SL-CC01601 allege severe and debilitating injuries to Plaintiff David McDonald.

13. A notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action is based. 28 U.S.C. § 1446 (b)(1).

14. CSC, Southwest's registered agent in Missouri, was served with the Summons and Petition on February 4, 2025. *See* Exhibit E, attached hereto. This Notice of Removal, therefore, is timely filed within thirty (30) days after the receipt by Southwest through service or otherwise of Plaintiffs' Petition. *Id.*

III.
REMOVAL PROCEDURE

15. The Circuit Court of St. Louis County, Missouri, is located within the Eastern District of Missouri, Eastern Division. Venue is thus proper under 28 U.S.C. § 105(a)(1) because this is the “district and division embracing the place where such action is pending.” *See* 28 USC §1441(a).

16. In accordance with 28 U.S.C. §1446(d), Defendant will give written notice of this Notice of Removal to all adverse parties and will file a copy of the Notice with the clerk of St. Louis County Circuit Court.

17. Defendant has complied with all applicable provisions of 28 U.S.C. § 1446 and the applicable Federal Rules of Civil Procedure and the Local Rules of this District.

18. As required by 28 U.S.C. § 1446(a) and Local Rule 2.03, copies of all process, pleadings, orders and other documents currently on file in Case No. 25SL-CC00697 are attached hereto as Exhibit A. A copy of the docket sheet is attached hereto as Exhibit B.

19. Defendant has also attached hereto the Original Filing Form (Exhibit C) and Civil Cover Sheet (Exhibit D) in this matter.

20. The filing fee of \$405 has been tendered to the Clerk of the United States District Court for the Eastern District of Missouri, Eastern Division, along with the original Notice of Removal.

21. Defendant has given notice, simultaneously with the filing of this Notice of Removal, to Plaintiff and to the Circuit Court of St. Louis County, Twenty-First

Judicial Circuit of Missouri, and has filed a copy of this Notice of Removal with the Clerk of the Circuit Court of St. Louis County.

IV.
CONCLUSION

22. Defendant hereby gives notice that Case No. 25SL-CC00697 now pending in the Circuit Court of St. Louis County, Missouri, Twenty-First Judicial Circuit, is removed from state court to the United States District Court for the Eastern District of Missouri, Eastern Division.

WHEREFORE, Defendant, Southwest Airlines Co., prays that this Court take jurisdiction of this action to its conclusion and to final judgment to the exclusion of any further proceedings in the state court in accordance with law, and for any such other or further relief to which Defendant may show itself justly entitled.

Respectfully submitted,

NELSEN & LEE, P.C.

By /s/ Leo W. Nelsen

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ATTORNEYS FOR DEFENDANT,
SOUTHWEST AIRLINES CO.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 28, 2025, the foregoing was electronically filed with the Clerk of Court using the Court's CM/ECF System and electronic copies of the foregoing were served by operation of same upon all counsel of record, whose names are listed below. In addition, copies of the foregoing were served upon the following counsel of record by email:

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